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IN THE

Supreme Court of the United States

October Term, 1962

No. [redacted] 100

DION TYRONE DIAMOND,

Petitioner,

—v.—

STATE OF LOUISIANA.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

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Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana entered in the above entitled case on January 3, 1963.

Citation to Opinions Below

The opinions below are not reported. The Nineteenth Judicial District Court for the Parish of East Baton Rouge filed a series of per curiam opinions ruling upon the petitioner's bill of exceptions which were dated November 8, 1962 (R. 23-41), and are printed in the appendix hereto at p. 3a.

The Supreme Court of Louisiana entered an order denying the applications for writs of certiorari, mandamus and prohibition (R. 206), which is unreported but is set forth in the appendix hereto, *infra*, p. 25a.

Jurisdiction

The judgment of the Supreme Court of Louisiana was entered January 3, 1963 (R. 206). The jurisdiction of this Court is invoked under 28 U. S. C., §1257(3), petitioner claiming rights, privileges and immunities under the Fourteenth Amendment to the Constitution of the United States.

Question Presented

Whether, where petitioner engaged in making speeches—an activity within the area of free expression protected by the Constitution—he was denied due process under the Fourteenth Amendment when punished under a state law containing general and indefinite prohibitions against disturbing the peace which are not narrowly drawn to define and prohibit specific conduct?

Statutory and Constitutional Provisions Involved

1. This case involves Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. This case also involves Louisiana Revised Statute, 14:103 which provides as follows:

> §103. *Disturbing the peace*
>
> A. Disturbing the peace is the doing of any of the following in such manner as would foreseeably disturb or alarm the public:
>
> (1) Engaging in a fistic encounter; or
>
> (2) Using of any unnecessarily loud, offensive, or insulting language; or

(3) Appearing in an intoxicated condition; or

(4) Engaging in any act in a violent and tumultuous manner by any three or more persons; or

(5) Holding of an unlawful assembly; or

(6) Interruption of any lawful assembly of people; or

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars or imprisoned for not more than ninety days, or both.

B. Any person or persons, providing however nothing herein contained shall apply to a bona fide legitimate labor organization or to any of its legal activities such as picketing, lawful assembly or concerted activity in the interest of its members for the purpose of accomplishing or securing more favorable wage standards, hours of employment and working conditions, while in or on the premises of another, whether that of an individual person, a corporation, a partnership, or an association, and on which property any store, restaurant, drug store, sandwich shop, hotel, motel, lunch counter, bowling alley, moving picture theatre or drive-in theatre, barber shop or beauty parlor, or any other lawful business is operated which engages in selling articles of merchandise or services or accommodation to members of the public, or engages generally in business transactions with members of the public who shall:

(1) prevent or seek to prevent, or interfere or seek to interfere with the owner or operator of such place of business, or his agents or employees, serving or selling food and drink, or either, or rendering service

or accommodation, or selling to or showing merchandise to, or otherwise pursuing his lawful occupation or business with customers or prospective customers or other members of the public who may then be in such building, or

(2) prevent or seek to prevent, or interfere or seek to interfere with other persons who are expressly or impliedly invited upon said premises, or with prospective customers coming into or frequenting such premises in the normal course of the operation of the business conducted and carried on upon said premises, shall be guilty of disorderly conduct and disturbing the peace, and upon conviction thereof, shall be punished by a fine of not more than five hundred dollars or by imprisonment in the parish jail for not more than six months, or by both such fine and imprisonment. (As amended Acts 1960, No. 70, §1.)

Statement

Petitioner, Dion T. Diamond, seeks review of his conviction of the crime of "disturbing the peace" in the Nineteenth Judicial District Court of Louisiana, Parish of East Baton Rouge. Petitioner was charged in that Court by an information (R. 1) filed March 8, 1962, in case No. 42,917 which alleged that on January 30 and 31, 1962, he:

> . . . unlawfully did violate L.R.S. 14:103 in that he, not a student of Southern University, did enter upon the premises of Southern University and there engage in and encourage students of Southern University to hold unruly, unauthorized demonstrations on the Campus and did lead and encourage said students to march through the University buildings while classes were being conducted and did encourage said students

> to boycott and leave the classes in such manner as would foreseeably disturb and alarm the public . . .

Petitioner was arraigned and he entered a plea of not guilty March 8, 1962 (R. 42). On March 12, 1962, the trial court entered an order, over petitioner's objection, granting the State's motion to consolidate this case for trial with five other separate changes then pending against petitioner (R. 42). But, eventually, case No. 42,917 was tried separately (cf. R. 59), petitioner was convicted only on this charge, and the present petition thus involves only the charge quoted above. Petitioner has not been brought to trial on the other informations, which included allegations that he violated LSA-R.S. 14:103 by holding unlawful assemblies and also by interrupting lawful assemblies.[1]

Before trial petitioner filed an application for a bill of particulars (R. 9) and a motion to quash the information (R. 3), both of which were overruled (R. 44). Trial was held May 8, 1962, and petitioner was found "guilty as charged" (R. 44) by the Court sitting without a jury. A motion for new trial (R. 12) was overruled May 24, 1962 (R. 45). In the motion to quash and the motion for new trail petitioner raised federal constitutional objections asserting that the statute as applied to him was unconstitutionally vague and that it violated his rights to free speech

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[1] Copies of 3 of the 5 other informations appear in this record (R. 6-8), having been filed in connection with petitioner's motion to quash. Case No 42,615 alleged that petitioner violated LSA-R.S. 14:103 by holding unlawful assemblies, and No. 42,616 alleged a violation of the same statute by interrupting lawful assemblies. Case No. 42,612 charged that petitioner violated LSA-R.S. 14:103.1, by refusing to leave the premises of Southern University when requested to do so by authorized University personnel. All three informations related to the period January 29 through February 1, 1962. Other pending informations charged petitioner with vagrancy under LSA-R.S. 14:107 and with trespass under LSA-R.S. 14:63.

and assembly, as is set forth in more detail below, p. 11, et seq.

Petitioner was sentenced to pay a fine of $100 and costs, or in default of the fine, to be confined in the parish jail for 30 days, and, in addition, to be confined in the parish jail for 60 days (R. 45).

On November 8, 1962, the trial court filed a series of per curiams to petitioner's bills of exceptions (R. 23-41). Thereafter, on or about November 21, 1962, petitioner applied to the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition seeking to invoke the court's supervisory powers (R. 195). The writs were denied January 3, 1963, in an order by the Supreme Court of Louisiana stating (R. 206):

> The application is denied. We find no error in the rulings complained of.

Execution of the judgment was stayed for 90 days on January 10, 1963, to allow petitioner to seek review in this Court (R. 209).

The events leading to petitioner's arrest were as follows. Southern University in East Baton Rouge Parish Louisiana is a school having about 4400 students (R. 128). The school had been the scene of a series of demonstrations and meetings by students from about December 15, 1961 until the time of petitioner's arrest on February 1, 1962 (R. 89). Some students at Southern were boycotting classes until the situation of students who had been arrested in anti-segregation demonstrations was resolved with the school (R. 130, 133, 134). Dion T. Diamond, who was not a student at Southern University, was first observed on the campus by the State's witnesses (University employees) on January 30, 1962. The evidence at the trial related to a series

of speeches made by Diamond to students in a quadrangle on the campus on January 30 and 31, 1962. There was also evidence as to the circumstances of his arrest on February 1, 1962. There was no evidence that petitioner was ever ordered not to enter the campus, or to leave it, and no evidence that he was ever told that he could not make speeches on the campus or that he needed any permission to do so. The University registrar testified that the school was a public institution, and that "anyone may come there who wishes" (R. 7).

1. *Events of January 30, 1962.*

Between 9:30 and 10:00 A.M. Diamond was seen by the Dean of Students Marvin Harvey (R. 113). Diamond was talking to three to four hundred students in a quadrangle near the student union building (R. 113). Dean Harvey said that Diamond was "talking about the importance of demonstrating and staying out of classes" (R. 113). After about 15 minutes the meeting broke up and the students went in various directions (R. 114). The Dean stated that during the speech the students were listening, clapping and indicating "expressions of approval" (R. 115). The Dean said that he had not authorized Diamond to have a meeting (R. 115).

That afternoon at about 1:00, Dean Harvey observed about 40 students walking around the campus with signs (R. 115-116).[2]

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[2] A defense witness, Jeanette Gilliam, a former student at Southern, said that she was present at a speech made by Diamond in the same area at about 12:00 noon on the 30th. None of the State's witnesses mentioned this speech. Miss Gilliam stated that Diamond asked students to stay out of classes, but that he did not advocate students going into classrooms and taking students out of classes (R. 179-181).

2. Events of January 31, 1962—morning.

Diamond made another speech at the same place at a time variously estimated at 9:15 to 9:45 A.M. before a group estimated by the school's chief security officer William Pass at two to three hundred (R. 66) and estimated by Dean Harvey at four to five hundred (R. 116). Pass stated that this was a regular school day, but that students at that time had been boycotting classes on the campus for three or four days (R. 66; 96). In his speech Diamond told the students not to go to classes; that the faculty was supporting them and had signed some type of petition; and that they should show their gratitude by not going to classes (R. 68). Dean Harvey said that the tenor of the speech was the same as that of the previous day (R. 117); that he had not authorized the meeting (R. 117); that it lasted between 15 and 20 minutes (R. 117); and that he started toward Diamond to inform him that he did not have permission to hold the meeting, but that Diamond ceased speaking and the group dispersed before he got there (R. 116-117).

3. Events of January 31, 1962—afternoon.

Security officer Pass and his assistant Willie Harris testified about a speech Diamond made during the noon hour on January 31. Harris estimated that five to six hundred students were there (R. 149); Pass stated there were about the same number or possibly more than were at the morning speech, e.g., two to three hundred (R. 69). Pass stated that "Diamond told the students that we will go through the classrooms and if necessary we will put them out of the classrooms" (R. 71). Harris said that Diamond was pleading for more followers from the student body (R. 155); that he urged the students to stay out of classes and was calling for at least fifty percent of the stu-

dents to support him (R. 155); and that Diamond told the students "let's go through the classrooms" (R. 156). Dean Harvey described this speech by saying that it "concerned principally the boycotting of classes" (R. 118).

According to Dean Harvey, about one hour after this speech he observed at least a hundred students begin to go from one classroom building to another carrying signs; that this was a noisy procession which disturbed people in the buildings where classes were being conducted at the time; and that this lasted over half an hour (R. 118-119). Mr. Pass said that the students were walking on the campus and through the classrooms singing and stomping in a very loud manner which caused a disturbance for over an hour (R. 71-72); that they carried signs (R. 73-76); and that classes in progress were disturbed (R. 72-73). His assistant, Harris, also recounted this event saying that the students were "pulling on doors, stomping on the halls" (R. 155); and that they were disturbing the classes (R. 155). No witness testified that anyone was actually "pulled" from any classroom. Pass testified that no one was injured and that there were no fights (R. 110).

None of the witnesses testified that Diamond did anything but make the speeches mentioned above. No witness testified that Diamond entered any University building. Pass and Harris both stated that they did not see Diamond in any of the buildings (R. 92; 156). No witness testified that Diamond carried any signs or participated in making them (cf. R. 88). On cross examination Pass was asked (R. 95):

> Q. Now, what did the accused do other than to make a speech? A. That is all I witnessed him doing. He just made a speech.

4. *Events of January 31, 1962—evening.*

At about 6:00 P.M. on January 31 an official meeting of the student senate was held in the "old gymnasium", at which Dean Harvey announced that this was the only authorized student meeting, and the president of the student senate, Murphy Jackson, spoke urging the students to go to classes. Murphy Jackson testified that Diamond sought permission to speak, but when this was refused Diamond left the meeting without causing any trouble (R. 174); that Diamond asked students who wanted to have an "outery" not to disturb the meeting and to be quiet or to leave (R. 175). Dean Harvey said that when Diamond left the meeting about 125 students also left (R. 124). Shortly afterwards there was an impromptu outdoor gathering outside the "new gymnasium" at which Diamond and a number of students spoke (R. 124-125, 186). Defense witnesses testified that on this occasion Diamond reprimanded the students for reportedly having gone through the classroom buildings that afternoon (R. 181, 183, 186-187).

5. *Events of February 1, 1962.*

On the morning of February 1, Diamond arrived on the campus in a taxicab with several other persons (R. 188-189). As soon as he got out of the taxicab he was placed under arrest by Willie Harris, the assistant security officer who was also a deputy sheriff (R. 87, 107-108, 144). Harris was accompanied by Chief Security Officer Pass who drove the two of them to Baton Rouge jail. Pass and Harris both stated that on this occasion they merely observed Diamond getting out of the taxicab and that Harris immediately placed him under arrest. Harris had no arrest warrant (R. 145). Harris stated that he had wanted to arrest Diamond on the previous day during the noon speech, but had been unable to reach him because of the

crowd (R. 153). He stated that he arrested Diamond for "holding an unlawful assembly" the previous day (R. 148); and that no one told him to make the arrest (R. 153). Pass denied having ordered or requested Harris to make the arrest, or having made the arrest himself (R. 106).

How the Federal Questions Were Presented

The federal questions sought to be reviewed here were raised in the trial court on March 23, 1962, by petitioner's Motion to Quash the information (R. 3-5). In this motion petitioner objected that the statute under which he was charged was unconstitutionally vague and that it infringed his right of free speech in violation of the Constitution of the United States asserting, *inter alia*:

> 2. That LSA-R.S. 14:103 of 1950, as amended, should be declared void for vagueness, in that, said Statute is so vague on its face that one can not reasonably be expected to know what conduct is prohibited which could form the basis for a criminal prosecution.
>
> 3. That said Statute is so vague in its application as to violate the due process clause to the Fourteenth Amendment to the Constitution of the United States of America.
>
> • • • • •
>
> 7. That the said Bill of Information is insufficient to charge a crime under the provisions of LSA-R.S. 14:103 of 1950, as amended, except that the Statute be unconstitutional under the Constitution of the State of Louisiana and, as applied, violative of freedom of speech and assembly guaranteed to defendant by the First Amendment to the Constitution of the United States of America and a denial of due process and equal protection of the laws clauses as guaranteed to

> defendant by the Fourteenth Amendment to the Constitution of the United States of America, of which he is a citizen (R. 3-4).

The motion was argued, submitted and denied on April 9, 1962 (R. 44).

At the conclusion of the trial petitioner was found guilty as charged (R. 44). Thereafter, on May 23, 1962, petitioner filed a Motion for New Trial (R. 12-16). In the Motion for New Trial petitioner again objected that his conviction under "a general disturbing of the peace statute" violated his rights of free speech as protected by the Fourteenth Amendment to the Constitution. In the Motion for New Trial petitioner asserted, *inter alia*:

> 2. That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendant, on January 30 and 31, 1962, merely made speeches in protest of racial segregation to a small group of college students assembled in front of the Student Union Building on the campus of Southern University whereby he encouraged the students to stay out of classes in support of the freedom movement protesting racial segregation in the Baton Rouge community, the activity being not proscribed by a general disturbing of the peace statute, except depriving the defendant of his constitutional protections guaranteed by the First and Fourteenth Amendments to the Constitution of the United States of America.
>
> * * * * *
>
> 4. That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendant, as did others, between December 15, 1961 and February 1,

1962, made many speeches or public addresses on the campus of Southern University and to its student body urging or encouraging the students of said University to stay out of classes in protest of racial segregation and in support of the freedom movement in which students of the various Negro colleges and universities throughout the nation and particularly in the Southern States were participating; and that, to sustain a verdict of guilty in such case made and provided violates the defendant's freedom of speech accorded by the First Amendment to the Constitution of the United States of America and, furthermore, denies him due process of law and equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States, the evidence being such that it is impracticable to determine specifically who was responsible for the actions of the students of Southern University who participated in the freedom movement demonstrations. The defendant being not charged with conspiracy can not be held accountable for malicious acts of others, if there were any such acts.

* * * * *

6. That the said verdict is contrary to the law and evidence in that the evidence adduced on the trial of this cause clearly establishes that the defendant did not conduct himself in any way which disturbed or tended to disturb the peace. However, the defendant, on January 30 and 31, 1962, did make speeches in front of the Student Union Building on the campus of Southern University encouraging the students of Southern University, a segregated institution for Negro college students, to protest (as a unified student body) racial segregation in the Baton Rouge community; that such activities in which the defendant engaged does not constitute a violation of a disturbing the peace Statute.

except depriving defendant of freedom of speech, due process of law and equal protection of the laws guaranteed the defendant, a citizen of the United States, by the First and Fourteenth Amendments to the Constitution of the United States of America.

* * * * *

8. That the said verdict is contrary to the law and evidence in that it is repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and also repugnant to and in violation of the First and Fourteenth Amendments to the Constitution of the United States of America; that said verdict deprives the defendant of his freedom of speech, liberties, privileges, immunities, due process and equal protection of the laws as guaranteed by the provisions of the Constitution of the State of Louisiana and of the United States of America, respectively (R. 12, 13, 14, 15).

The Motion for New Trial was overruled May 24, 1962 (R. 45).

Petitioner filed a Bill of Exceptions (R. 17-22) objecting to the overruling of the Motion to Quash (Exception No. 1) and the overruling of the Motion for New Trial (Exception No. 9). The trial court wrote a per curiam to Bill of Exception No. 1 (R. 23-26). A portion of the per curiam dealing with the petitioner's vagueness objection is as follows (R. 24-25):

In Paragraph 2 of the motion to quash defendant urges that the statute (LSA-R.S. 14:103, as amended) should be declared void for vagueness, in that no one could reasonably be expected to know what conduct is prohibited. The statute sets forth six different specific acts, disjunctively, any one of which, if done in such a

manner as foreseeably would disturb or alarm the public, constitutes the crime. Sub-section 7 covers the commission of any other act in such a manner as to unreasonably disturb or alarm the public. The Supreme Court of Louisiana in the case of Town of Ponchatoula v. Bates, et al., 173 La. 824, 138 So. 851, upheld the constitutionality of a town ordinance denouncing the crime of disturbing the peace which read in part: "It shall be unlawful for any person within the corporate limits of the Town of Ponchatoula to engage in a fight or in any manner disturb the peace." The court held that it was not necessary that the ordinance define the offense for the reason that no better definition for the offense could be found than that contained in the ordinance itself. The Supreme Court of Louisiana cited this case in denying writs in the case of Louisiana v. Jannette Hoston, et al., No. 35,567 on the Criminal Docket of the Nineteenth Judicial District Court and the two cases consolidated with it. See also these cases reported in 82 Supreme Court Reporter 248 wherein the court did not pass upon the constitutionality of the statute involved.

Paragraph 3 of the motion to quash alleges that the *statute is so vague in its application* as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States of America. On the hearing on the motion no evidence was introduced by the defendant to show that the statute was being applied in such an alleged unconstitutional manner.

The portion of the opinion rejecting petitioner's free speech objection was as follows (R. 26):

Article 7 of the motion to quash alleges that the bill of information is insufficient to charge a crime under LSA-R.S. 14:03 of 1950, as amended, "except that the

> Statute be unconstitutional under the constitution of the State of Louisiana" and, as applied, is violative of freedom of speech and assembly guaranteed to defendant by the First and Fourteenth Amendments to the Constitution of the United States of America. This court felt that the bill of information as drawn did sufficiently charge the commission of a crime under the statute and that the statute was constitutional. As to the manner in which it was being applied no proof was introduced by the defendant at the hearing on the motion to show that it was being applied in any unconstitutional manner.

In overruling petitioner's Motion for New Trial the court stated with respect to petitioner's constitutional objections that "This Court was also satisfied that the statute denouncing the crime is constitutional" (R. 40). Petitioner again asserted his constitutional objections in the "Applications for Writs of Certiorari, Mandamus and Prohibition," etc. filed in the Supreme Court of Louisiana (R. 195-202). Petitioner asserted, *inter alia*:

> 5. That the Honorable Court aquo erred in overruling relator's Motion for New Trial; that the evidence adduced on the trial of this cause clearly establishes that relator, on January 30 and 31, 1962, merely made speeches in protest of racial segregation to a small group of college students assembled in front of the Student Union Building on the campus of Southern University whereby he encouraged the students to stay out of class in support of the freedom movement protesting racial segregation in the Baton Rouge community, the activity being not proscribed by a general Disturbing of the Peace Statute, except depriving relator of his constitutional protections guaranteed by

the First and Fourteenth Amendments to the Constitution of the United States of America (R. 196-197).

Petitioner made similar constitutional objections raising the free speech defense in paragraphs 6, 8, 9, 10 and 11 of the petition.

The Supreme Court of Louisiana denied this application on January 3, 1963 (R. 206).

REASONS FOR GRANTING THE WRIT

The Decision Below Conflicts With Decisions of This Court in That Petitioner Was Convicted for Engaging in His Constitutionally Protected Right of Free Speech Under a Law Too Vague and Indefinite to Conform to the Fourteenth Amendment's Requirements of Due Process.

This Court has demanded strict standards of statutory specificity when criminal laws touch upon the area of free speech and expression, because "First Amendment freedoms need breathing space to survive." *N.A.A.C.P.* v. *Button*, —— U. S. ——, 9 L. ed. 2d 405, 417-418; *Winters* v. *New York*, 333 U. S. 507; *Cantwell* v. *Connecticut*, 310 U. S. 296, 311; *Edwards* v. *South Carolina*, —— U. S. ——, 9 L. ed. 2d 697, 702-704; *Stromberg* v. *California*, 283 U. S. 359, 369. The statute under which petitioner was convicted sweeps within its ambit and punishes a great variety of conduct, including the constitutionally protected area of speech and expression, "under a general and indefinite characterization, . . . leaving to the executive and judicial branches too wide a discretion in its application," *Cantwell* v. *Connecticut*, *supra* (310 U. S. at 308). If conduct, such as petitioner's series of speeches to student groups on the Southern University campus, can be regulated and punished at all, it can only be reached under a law "narrowly drawn to define

and punish specific conduct as constituting a clear and present danger to a substantial interest of the State." *Cantwell* v. *Connecticut, supra* (310 U. S. at 311); *Edwards* v. *South Carolina, supra; Garner* v. *Louisiana*, 368 U. S. 157, 202 (concurring opinion); *Thornhill* v. *Alabama*, 310 U. S. 88, 105. Since nothing in the statute under which petitioner was convicted (LSA-R.S. 14:103) represents a legislative judgment that the specific conduct of petitioner alleged in the bill of information or proved at the trial should be prohibited, the conviction offends due process under the precedents cited above.

It is readily evident that the entire case against petitioner hinges upon things that he said rather than upon any nonverbal act. This is clear from the information which charges a series of activities, each of which includes a component of speech. It is charged that petitioner did "engage in and *encourage* students . . . to hold unruly, unauthorized demonstrations," and did "lead and *encourage* . . . students to march . . . " etc., and did "*encourage* . . . students to boycott and leave the classes . . . " (R. 1; emphasis supplied). And both the evidence and the court's statement of the basis of the finding of guilt make clear that the conviction rests on petitioner's speeches.[3] Although the information charged

[3] In ruling upon Bill of Exception No. 7 relating to the overruling of defendant's motion for a directed verdict, the court described the basis of its finding of guilt as follows (R. 37):

> "The court overruled the motion for the reason that the state, in the opinion of the court, had sustained its burden of proving the guilt of the defendant beyond a reasonable doubt. Reliable, competent evidence offered by the state showed that the defendant, a non-student, was present on the campus of Southern University on the dates alleged in the bill of information, and while there did, in speeches made by him in meetings not authorized by those in charge of such matters, encourage and exhort Southern University students to boycott classes and to march into the classrooms while classes were in session and to disrupt the classes, even to the extent of pulling the students from the classrooms, in such a manner as would foreseeably disturb and alarm the public."

that petitioner did "engage in" and "lead" as well as "encourage" the demonstrations and the march through the University buildings, the trial court regarded petitioner's speeches as sufficient to sustain the charge, on the theory that counseling others to do an act was equivalent to doing it personally (R. 34). Certainly the conviction cannot validly rest on the premise that petitioner did anything beyond speaking—for there is no evidence of any such acts. *Thompson* v. *City of Louisville*, 362 U. S. 199; *Garner* v. *Louisiana*, 368 U. S. 157; *Taylor* v. *Louisiana*, 370 U. S. 154.

The statute, therefore, must be measured against the strict standards of permissible vagueness which are applicable in the area of free speech. The inquiry in the present case is complicated by the fact that the record does not indicate what part or parts of LSA-R.S. 14:103 petitioner was found to have violated. Neither the prosecution nor the trial court expressly indicated which part of the law was relied upon for the charge or the conviction (R. 23). But defense counsel assumed, with reason, that the charge was pursuant to LSA-R.S. 14:103A(7).[4] This assumption was made explicit in the motion for new trial and the court's per curiam did not state that it was erroneous.[5] The as-

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[4] Section 14:103A(7) provides as follows:

"103. *Disturbing the peace*

A. Disturbing the peace is the doing of any of the following in such manner as would foreseeably disturb or alarm the public:

* * * * *

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

[5] The motion for new trial asserted that the verdict was "contrary to the law and the evidence" in that petitioner did not "engage in any activity that had been denounced as a crime by LSA-R.S. 14:103(7) of 1950, as amended, the Statute under which the defendant was charged" (R. 12). The per curiam stated (R. 40):

"The motion for a new trial alleges that the verdict is contrary to the law and the evidence. The Court heard all the evidence on the trial of the case and was convinced of the guilt of the accused beyond a reasonable doubt."

sumption that §14:103A(7) is the basis of the charge is reasonable because none of the matters charged in the information are readily identifiable as relating to any subsection of the statute other than this "catch-all" provision. Subsections A(1), A(3) and the entire subsection B are quite obviously not involved since nothing in the charge or the evidence is even remotely related to the activities mentioned therein.[6] There is almost equally scant reason to think that the conviction was founded upon any of the remaining subsections—A(2), A(4), A(5) or A(6)—since there was no allegation or evidence of "loud, offensive or insulting language" or of "violent and tumultuous" conduct by petitioner, and since whatever is meant by "holding . . . an unlawful assembly" and "interruption of any lawful assembly," separate informations charging these offenses were, and still are, pending against petitioner. However, because there may be some basis, however slight, for a tenuous contention that one or more of these subsections is involved, this possibility is dealt with in the subsequent part of this argument below at pp. 23-24. For the present, the argument is addressed to the far more likely possibility that the trial court regarded the case, as petitioner did, i.e., as founded upon LSA-R.S. 14:103A(7).

This provision is the same law which was considered by this Court in *Garner* v. *Louisiana*, 368 U. S. 157.[7] The majority in *Garner*, *supra* (368 U. S. at 162, 163, 166, note 13) found it unnecessary to decide the vagueness and free speech claims, but these claims were fully discussed in and

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[6] Subsections A(1) and A(3) deal, respectively, with fistic encounters and intoxicated persons. Subsection B relates to interferences with certain types of businesses.

[7] LSA-R.S. 14:103 was amended in 1960 after the trial in *Garner*, to add what is now part B, but the law considered by this Court in *Garner*, Sec. 14:103(7) remains and is the same as the present Sec. 14:103A(7).

formed the basis of, the concurring opinion by Mr. Justice Harlan (368 U. S. at 196, et seq.). In Justice Harlan's view, this law was unconstitutionally vague as applied in all three of the factual situations presented in *Garner* and the cases consolidated with it (368 U. S. at 205). As that opinion made clear, the catch-all provisions of this law prohibiting "any other act [done] in such a manner as to unreasonably disturb of alarm the public," gives a defendant "no warning as to what may fairly be deemed to be within its compass" (368 U. S. at 207).

In this case (R. 25), as in *Garner*, the Louisiana courts have referred only to the definition of disturbing the peace given in an earlier case, *Ponchatoula* v. *Bates*, 173 La. 824, 827, 138 So. 851, 852, where it was said to include "any act or conduct of a person which molests the inhabitants in the enjoyment of that peace and quiet to which they are entitled, or which throws into confusion things settled, or which causes excitement, unrest, disquietude, or fear among persons of ordinary normal temperament." Indeed, to support its holding on the vagueness issue, the trial court even relied upon the Louisiana Supreme Court's ruling in *Garner* and its companion cases (R. 25). It is obvious, then, that this case does involve a vague and generalized conception of "disturbing the peace"; that the law has not been limited by construction; and that the law is applied here as it was in *Garner* to conduct within the area of speech and expression. This Court's opinions teach that such convictions deny due process. *Cantwell* v. *Connecticut*, *supra*; *Thornhill* v. *Alabama*, *supra*; *Terminiello* v. *Chicago*, 337 U. S. 1; *Edwards* v. *South Carolina*, *supra*.

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[8] The Louisiana Supreme Court itself questioned the validity of an earlier general "disturbing the peace" law applied to religious expression on vagueness grounds in *State* v. *Sanford*, 203 La. 961, 14 So.2d 778.

It is submitted that petitioner's advocacy that students voluntarily attending a public University refuse to attend classes as a form of protest was a form of speech on public issues which a state cannot prohibit, whatever may be one's view of the social utility of such a speech.[9] *Terminiello* v. *Chicago, supra.* The information and the court's per curiam (R. 37) make it clear that petitioner was charged and convicted for this lawful advocacy *and* for allegedly urging that students march into classroom buildings and disrupt classes. Cf. *Stromberg* v. *California*, 283 U. S. 359. But even if some or all of petitioner's speech could validly be prohibited by the State, it cannot be punished under a vague and general law such as LSA-R.S. 14:103A(7), which is as readily applicable to protected speech as it is to that which is not within the bounds of lawful advocacy, as, for example, "fighting words" (see *Chaplinski* v. *New Hampshire*, 315 U. S. 568). The law denies due process because "by its terms [it] appears to be as applicable to 'incidents fairly within the protection of the guarantee of free speech,' Winters v. New York, supra (333 U. S. at 509), as to that which is not within the range of such protection." *Garner* v. *Louisiana*, 368 U. S. at 207 (concurring opinion). Petitioner need not bear the burden of showing that the State could not have passed another, more specific, law to reach his conduct. *Thornhill* v. *Alabama*, 310 U. S. 88, 97, 98.

Previously, in the petition, we adverted to the possibility that the conviction might be attempted to be justified under some portions of the statute other than subsection A(7). Actually, each of these other subsections is equally vague and indefinite as applied to petitioner's conduct, giving no

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[9] The reasons for the student boycott of classes are not explained in the record except for a reference to "certain situations" concerning other students "who had been arrested several weeks previously" for "taking part in antisegregation demonstrations" (R. 130-133).

specific warning that this type of speech is prohibited in the circumstances of the case. To the extent that the law touches on the subject of expression, i.e., in terms of "unnecessarily loud, offensive or insulting language" and acts done in a "violent or tumultuous manner by three or more persons," there is no fair warning that petitioner's speech could be so regarded. But given the vagueness of subsection A(7), and the obvious possibility that it was the basis of conviction, a consideration of the vagueness of these other portions of the law may well be pretermitted.

Under the doctrine of *Stromberg* v. *California*, 283 U. S. 359, 368, if it cannot be known from the record whether or not a defendant was convicted under an unconstitutionally vague portion of a law affecting free speech, the conviction cannot stand because of the indeterminate possibility that it was premised on another portion of the law not subject to the same infirmity. In *Stromberg* the Court, noting that the defendant had been convicted under a general jury verdict which did not specify which of three statutory clauses it rested on, concluded that "if any of the clauses in question is invalid under the Federal Constitution, the conviction cannot be upheld" (283 U. S. at 368). The principle was followed in *Williams* v. *North Carolina*, 317 U. S. 387, 292, where the Court said:

> To say that a general verdict of guilty should be upheld though we cannot know that it did not rest on the invalid constitutional ground on which the case was submitted to the jury, would be to countenance a procedure which would cause a serious impairment of constitutional rights.

See also *Cramer* v. *United States*, 325 U. S. 1, 36, note 45; *Yates* v. *United States*, 354 U. S. 298, 312; *Thomas* v. *Collins*, 323 U. S. 516, 529. Here as in *Stromberg*, *supra*, there is

a clear and obvious possibility that the conviction was based upon an impermissibly vague portion of the law. Neither the accusation, the verdict, nor anything else in the record makes it certain that this conclusion is erroneous. The fact that the trier of the facts in *Stromberg* was a jury and in this case was a judge does not represent a significant distinction, as *Thomas* v. *Collins, supra*, demonstrates. Since petitioner was charged with violation of LSA-R.S. 14:103, and given a single penalty for violating the law, which was upheld in its entirety, it follows that a determination that any part of the law denies due process must impair the entire conviction.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

Minutes of Court Dated May 8, 1962

NINETEENTH JUDICIAL DISTRICT COURT

CRIMINAL SECTION

No. 42,917

[SAME TITLE]

Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

This case came on for trial in accordance with previous assignment, the accused, charged with violation of L.R.S. 14:103, being present in court represented by counsel. On motion of counsel for the accused, the court ordered a sequestration of witnesses in this case. Evidence was introduced, the case argued and submitted, and the court, for oral reasons assigned, found the accused guilty as charged, to which verdict counsel for the accused excepted and asked that a formal bill be reserved. Counsel for the accused gave notice in open court to the court and opposing counsel of his intention to apply to the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition.

The court denied the request of counsel for the accused to release the accused on his old bond, and set a new bond for the accused pending sentence in the amount of $700.00.

Sentence deferred until May 24, 1962.

Minutes of Court Dated May 24, 1962

NINETEENTH JUDICIAL DISTRICT COURT

CRIMINAL SECTION

[SAME TITLE]

Honorable Fred S. LeBlanc, Judge presiding, was opened pursuant to adjournment.

The motion for new trial previously filed herein was argued, submitted, and the court, for oral reasons assigned, overruled the motion for new trial, to which ruling of the court counsel for the accused excepted and asked that a formal bill be reserved.

The accused, having previously been tried for violation of L.R.S. 14:103 and found guilty of said violation, was present in court represented by counsel. The accused was brought before the bar for sentence. Whereupon, the court sentenced the accused to pay a fine of $100.00 and costs, or in default of payment thereof to be confined in the parish jail for thirty days, and in addition thereto to be confined in the parish jail for sixty days, to which sentence counsel for the accused excepted and asked that a formal bill be reserved.

Counsel for the accused gave notice to the court and to the Assistant District Attorney in open court of his intention to apply to the Supreme Court of Louisiana for writs of certiorari, mandamus and prohibition, and requested that the accused be released on his present bond. The court ordered the accused released on his present bond, and granted counsel for the accused until June 22, 1962 during which to apply to the Supreme Court for writs.

Per Curiam to Bill of Exception No. 1

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

The application for a bill of particulars was denied by the court for the reason that the information sought by the defendant did not pertain to the nature of the charge. LSA-R.S. 235. It will be noted that the defendant in his application did not call upon the district attorney to specify under which sub-section of LSA-R.S. 14:103 he was proceeding. The bill of information charges a violation of R.S. 14:103 and sets forth all the facts upon which the state was relying for a conviction. The state is not required to furnish to the defendant the evidence it intends to introduce to obtain a conviction. Likewise, the law does not require the state to supply the names of any witnesses to the defendant.

When the court rendered judgment denying defendant's application for a bill of particulars defendant objected to the ruling of the court and reserved a "formal" bill of exception, "and asked that the motion, the bill of information all be made a part of the record * * *." Defendant did not request that the ruling of the court be made a part of the Bill of Exception. Moreover, he did not specify the ground of his objection and did not make that ground a part of his Bill of Exception. Defendant's Bill of Exception does not have incorporated within it any of these mat-

ters and there is nothing attached to it. LSA-R.S. 15:498-499.

In objecting to the ruling of the court counsel for the defendant in reserving his Bill of Exception asked that the motion for a bill of particulars and the bill of information be made a part of the "record"—not a part of the Bill of Exception. The bill of information and the application for a bill of particulars were already part of the record. No part of the record becomes a part of the Bill of Exception unless it is incorporated therein or attached thereto and made a part thereof.

The motion to quash the bill of information was overruled by the court. In Paragraph 1 of the motion to quash defendant contends that the bill of information amounts to a multiplicity of charges growing out of the same incident or occurrence, yet he does not claim that the bill of information is faulty on the ground of duplicity. In fact, he alleges "that said alleged acts could only constitute a single crime * * *." The state contended that under the authority of LSA-R.S. 15:222 it had the right to cumulate the acts of the defendant in one count, since it was apparent that they were connected with the same transaction and constituted but one act and that it had charged them conjunctively in the bill of information. Defendant, as pointed out above, conceded that the acts of the defendant constituted but one crime. This court was of the opinion the state's position was correct. State v. Morgan, 116 So. (2d) 682, 238 La. 829; State v. Amiss, 89 So. (2d) 877, 230 La. 1003. Accordingly, the court overruled the motion to quash the bill of information on this ground of attack.

In Paragraph 2 of the motion to quash defendant urges that the statute (LSA-R.S. 14:103, as amended) should be

declared void for vagueness, in that no one could reasonably be expected to know what conduct is prohibited. The statute sets forth six different specific sets, disjunctively, any one of which, if done in such a manner as foreseeably would disturb or alarm the public, constitutes the crime. Sub-section 7 covers the commission of any other act in such a manner as to unreasonably disturb or alarm the public. The Supreme Court of Louisiana in the case of Town of Ponchatoula v. Bates, et al., 173 La. 824, 138 So. 851, upheld the constitutionality of a town ordinance denouncing the crime of disturbing the peace which read in part: "It shall be unlawful for any person within the corporate limits of the Town of Ponchatoula to engage in a fight or in any manner disturb the peace." The court held that it was not necessary that the ordinance define the offense for the reason that no better definition for the offense could be found than that contained in the ordinance itself. The Supreme Court of Louisiana cited this case in denying writs in the case of Louisiana v. Jannette Hoston, et al., No. 35,567 on the Criminal Docket of the Nineteenth Judicial District Court and the two cases consolidated with it. See also these cases reported in 82 Supreme Court Reporter 248 wherein the court did not pass upon the constitutionality of the statute involved.

Paragraph 3 of the motion to quash alleges that the *statute is so vague in its application* as to violate the due process clause of the Fourteenth Amendment to the Constitution of the United States of America. On the hearing on the motion no evidence was introduced by the defendant to show that the statute was being applied in such an alleged unconstitutional manner.

Article 4 of the motion to quash alleges as a fact that there was no disturbance of the peace by the defendant

within the definition of the crime. This court took the position that the bill of information charged a crime under the statute and that it would not be known whether the defendant committed the crime charged until after the state had put on its case.

Article 5 of the motion to quash alleges that the statute was being unconstitutionally applied because the defendant, a member of the Negro race, has been heretofore engaged in activities protesting racial segregation and had lately come to Southern University to resume his collegiate work there as a student; that when he attempted to speak out in the cause of justice and freedom he was arrested and jailed. On the trial of the motion to quash the defendant offered no proof to establish these alleged facts.

Article 6 of the motion to quash sets forth a conclusion to the effect that the use of the criminal processes of the State of Louisiana in the manner described in paragraph 5 of the motion denies and deprives the defendant of his rights, privileges, immunities and liberties guaranteed to him by the due process and equal protection of the law clauses of the Fourteenth Amendment to the Constitution of the United States of America. In this connection, the defendant on the hearing of the motion offered no proof to show that defendant's constitutional rights had been violated in the manner described.

Article 7 of the motion to quash alleges that the bill of information is insufficient to charge a crime under LSA-R.S. 14:03 of 1950, as amended, "except that the Statute be unconstitutional under the constitution of the State of Louisiana" and, as applied, is violative of freedom of speech and assembly guaranteed to defendant by the First and Fourteenth Amendments to the Constitution of the United States of America. This court felt that the bill of

Per Curiam to Bill of Exception No. 1

information as drawn did sufficiently charge the commission of a crime under the statute and that the statute was constitutional. As to the manner in which it was being applied no proof was introduced by the defendant at the hearing on the motion to show that it was being applied in any unconstitutional manner.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 2

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

This Bill of Exception was reserved to the ruling of the court overruling defendant's objection to the testimony incorporated in the Bill of Exception. The basis of the objection was that the testimony of this witness should not be considered by the court because no explanation had been made as to what a security officer is, as to whether or not he is a peace officer or sheriff. The court considered the objection to be premature, and informed counsel for the defendant that he could develop this point on cross-examination. As a matter of fact, the witness on direct examination later explained that he was not a peace officer and that his duties as security officer consisted of maintaining the safety of the faculty staff, the administrative body and students of Southern University, as well as the property of the university.

I wish to point out that counsel for the defendant in resserving his Bill of Exception used these words: "To which ruling, Your Honor, I except and ask that a formal bill be reserved." Counsel did not at that time request that the facts upon which the objection and ruling were based be made a part of the Bill of Exception, nor did he move that the objection, the ruling and the reasons for the ruling be made a part of the Bill of Exception. It is the judgment

Per Curiam to Bill of Exception No. 2

of this court that the Bill of Exception was improperly reserved. LSA-R.S. 15:499-500.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 3

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

After the state's witness, William Pass, answered the question set forth in this Bill of Exception, counsel for the defendant objected to any testimony about the signs "because there is nothing on those things to identify that the accused had the placards made or that he had anything to do with them, those could be anybody's signs." The court overruled the objection as being premature, taking the position that this witness could testify about his familiarity with the signs. The signs at this juncture were not being offered in evidence by the state. It was the position of the court that it would give the state the opportunity to show, if it could, that there was some connection between the signs and the defendant in this case. Later, the state was able to show by the testimony of this witness that he obtained some signs on the date of the alleged offense from Barracks B on the campus of Southern University and that a group of students from the university were carrying those signs, or similar signs, when they were marching on the campus and into four buildings thereon where classes were in progress after being encouraged by the defendant to go into the classrooms and disrupt the classes.

In reserving this Bill of Exception counsel for the defendant did not comply with the requirements of the law. LSA-R.S. 15:498-15:499. He merely excepted to the ruling in the

Per Curiam to Bill of Exception No. 3

following words: "To which ruling I except and ask that a formal bill be reserved." Although the minute clerk at the time of the reservation of the Bill of Exception took down the facts upon which the objection and the ruling were based, together with the objection, the ruling and the reasons for the ruling conformable to LSA-R.S. 15:499, counsel for the defendant, as stated above, did not request that this be done.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 4

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

After the testimony recited in this Bill of Exception the state offered in evidence some of the signs which had been identified by the witness as being the signs, or similar signs, which the students carried with them as they marched on the campus of the university and into the classrooms while classes were in progress, after they were encouraged by the defendant to disrupt the classes. Counsel for the defendant objected to the offering on the ground that the evidence was immaterial; secondly, that the witness had not testified that the defendant made the signs, or that the defendant had any knowledge of the signs being made, or that the defendant had instructed anybody to make the signs. The offering was also objected to on the ground that the defendant was not being tried for conspiracy and that the defendant was not responsible for what the students did, contending that all that the defendant did was to use freedom of speech. Objection was also made on the ground that the state had not laid a proper foundation for the introduction of the proffered evidence, in that the state had not accounted for the whereabouts of the signs from the date of the commission of the crime to the date of the trial and that it was possible that the signs could have been altered or changed.

The court permitted the signs (State-1, inscribed: "This is a Freedom Line! Don't Cross It"; State-2, inscribed: "Let's Twist Back to the Dorms. No Classes!"; State-3,

inscribed: "Please Stay Out!! Support Your Fellow Students"; and State-4, inscribed: "No Class Today, Sorry") to be introduced in evidence. The reason for the ruling as stated verbatim by the court at the time was: "This is not a case of theft where property has to be identified with that degree of particularity. This witness has testified where he found the signs, the students were in the process of making them there, and he saw either those signs or similar signs being carried by the students after they had been exhorted to go into the classrooms and get the students out of the classrooms, pull them out if necessary. This accused is charged with engaging in and encouraging the students to hold unruly, unauthorized demonstrations. Now, in heeding his words of encouragement it is always admissible to show what happened, that the students, being thus encouraged by the accused, proceeded to stamp and march and sing and carry these signs, even to the extent, to use the words of the accused himself, get them out of the classrooms, pull them out if necessary. Now, under the law there is a presumption that a man is presumed to know the natural consequences of his act, and I think that this accused, after so exhorting these students to swing into the classrooms, to march and to get the students out of there because the faculty is already behind them, and in effect if they refused to leave the classrooms to pull them out, and anything that these students did thereafter after being encouraged by this accused to do would be admissible, the natural consequence." * * * "He has said that he either saw these signs or similar signs being carried by the students, so I say it is not necessary in this type of case, because if we were trying these students for carrying signs which violated the law then that would be a different proposition, but the students are not being tried, the accused is being tried for disturbing the peace by urging them to do

Per Curiam to Bill of Exception No. 4

an unlawful thing, break up the classes, and, as I said, under 432 every defendant is presumed to intend the natural probable consequences of his act, and the law presumes that after he exhorts them to do what he did do or did tell them that they would resort to this type of activity, carry out his words of encouragement to break up the classes because the faculty was behind them and he was seeing to it, or going to see to it if he could, if the students would cooperate, to just break up the classes at Southern University so there wouldn't be any classes. Now in going about that he presumed the natural consequences of his act, they might sing, they might march, they might stomp and they might carry signs, and as long as this witness can say that these are similar signs that is enough for the court in this type of procedure, so I overrule the objection."

In reserving his Bill of Exception counsel for the defendant did so in the following words: "To which ruling we except and ask that a formal bill be reserved." This, in the opinion of the court, did not meet the requirements of the law. The minute clerk did, however, at the time take down the facts upon which the Bill of Exception and the ruling were based, together with the objection, the ruling and the reasons for the ruling in compliance with LSA-R.S. 15:499.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962
(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962
(Signed) BETTY BADY

Per Curiam to Bill of Exception No. 5

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

This Bill of Exception was taken by the defendant when the court overruled defendant's objection to the testimony set forth in this Bill of Exception. The basis of the objection was that there had been no testimony that the defendant conducted the procession of students on the campus and into the classrooms. The court overruled the objection for the reason that it was up to the court (the court being the judge of the facts in the case) to determine whether or not the defendant conducted the procession.

The witness on the stand at the time was Marvin L. Harvey, Dean of Students of Southern University. As such, he testified it was his responsibility to grant or refuse permission for the holding of student meetings on the campus. He testified that he had not authorized the defendant to hold any student meetings on the campus during the dates in the bill of information. Such unauthorized meetings were held, he testified, at which the defendant addressed the students. After the meeting held on the morning of January 30, 1962 this witness observed that approximately forty students were walking around the campus carrying signs. This occurred about one o'clock that afternoon. On the following morning the defendant was addressing an unauthorized meeting of students, estimated

by the witness to be between four and five hundred in number. There was another such meeting of students held between 12:30 and 1 o'clock on that same day, at which the defendant spoke to the students, and at about the hour of 2 o'clock the same afternoon the students paraded through the classrooms in a noisy manner carrying signs. In one of the buildings this witness testified that some students left classes. The demonstrators numbered about one hundred and the demonstration lasted more than thirty minutes.

When this objection was urged there was already testimony in the record from Security Officer William L. Pass that he saw and heard the defendant speaking to a group of from two to three hundred students on the campus, at which meeting he heard the defendant tell the students not to attend classes, that they should show their gratitude by not going to classes since the faculty was behind them. At another meeting of about the same number of students he heard the defendant tell the group to go to the classrooms and pull the students therefrom.

Now, one of the meanings of the word "conduct" is to "direct in action or course." It was clear to the court that the defendant had conducted the procession and demonstration of the students on the campus and in the classrooms. Under LSA-R.S. 14:24 all persons concerned in the commission of a crime, whether present or absent, whether they directly commit the offense, aid and abet in its commission, directly or indirectly counsel or procure another to commit the crime, are principals.

For the reasons given in the other per curiams, the court is of the opinion that this Bill of Exception was improperly reserved.

Per Curiam to Bill of Exception No. 5

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 6

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

This Bill of Exception was taken by the defendant after the testimony incorporated therein was given by the witness, Marvin L. Harvey, Dean of Students at the university. Counsel for the defendant, after ascertaining from the witness that unauthorized meetings on the campus had been held by students of Southern University on dates prior to the dates in the bill of information at which speeches were made, wanted to know from this witness what those speeches were about. The state objected. The court sustained the objection for the reason that it made no difference in the case on trial as to whether the law had been violated by others prior to the date of the crime charged in the bill of information. The court felt that whether the university had taken action as to those offenders was immaterial in the case at bar. The court was also of the opinion that it made no difference in the instant case whether the unlawful processions and demonstrations of the students on the dates alleged in the bill of information were brought about *solely* by the encouragement and exhortation of the defendant made by him on those dates or whether these processions and demonstrations were due in part to speeches that the students had heard from other speakers on other occasions prior to the date of this offense. The court took the position that the statute was violated when

Per Curiam to Bill of Exception No. 6

the state proved that the defendant had committed the acts alleged in the bill of information in such a manner as would foreseeably disturb or alarm the public. Whether the students who participated in the noisy processions and demonstrations had been impressed by the defendant's speeches encouraging and exhorting them to so act was, in the opinion of the court, immaterial for the reason that such speeches were of such a nature as to foreseeably disturb and alarm the public, regardless of the resulting action. The court had permitted the state to prove the resulting action for the reason that this defendant was presumed by law to intend the natural and probable consequences of his act. LSA-R.S. 15:432.

This court is of the opinion that this Bill of Exception was improperly reserved for the reasons given in the preceding per curiams.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 7

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

This Bill of Exception was reserved to the action of the court overruling defendant's motion for a directed verdict of acquittal after the state had rested its case in chief. In his motion counsel for defendant contended that the state had failed to prove its case, claiming that the evidence adduced by the state was insufficient to warrant and/or sustain a conviction of the defendant.

The court overruled the motion for the reason that the state, in the opinion of the court, had sustained its burden of proving the guilt of the defendant beyond a reasonable doubt. Reliable, competent evidence offered by the state showed that the defendant, a non-student, was present on the campus of Southern University on the dates alleged in the bill of information, and while there did, in speeches made by him in meetings not authorized by those in charge of such matters, encourage and exhort Southern University students to boycott classes and to march into the classrooms while classes were in session and to disrupt the classes, even to the extent of pulling the students from the classrooms, in such a manner as would foreseeably disturb and alarm the public.

All of the testimony introduced by the state was transcribed by the clerk, but counsel for the defendant in reserving his bill of exception to the court's ruling did not request that the testimony be attached to or made a part

of the bill. When the court overruled the motion for a directed verdict, counsel for the defendant reserved his Bill of Exception in the following words: "To which ruling I except and ask that a formal bill be reserved."

This Bill of Exception does not have incorporated within it the testimony offered by the state in chief, nor does it have that testimony attached to it or made a part thereof.

At the conclusion of the trial, after all the evidence was in, counsel for the defendant again moved for a directed verdict of acquittal. The court, being convinced of the guilt of the defendant beyond a reasonable doubt, overruled the motion.

All of the testimony introduced in the case by the state and the defendant was taken down and transcribed by the clerk. In reserving a Bill of Exception to the court's ruling in overruling the last motion for a directed verdict of acquittal, counsel for the defendant did not request that all the testimony be made a part of the Bill of Exception. He merely excepted to the ruling and asked that "a formal bill be reserved." The Bill of Exception does not have the testimony incorporated in it, nor does it have the testimony attached to it or made a part thereof.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962
(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962
(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 8

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

No. 42,917

[SAME TITLE]

This Bill of Exception was reserved by the defendant to the court's verdict finding the defendant guilty as charged. The court found the defendant guilty as charged because it was convinced beyond a reasonable doubt of his guilt. The court heard all the evidence. That evidence was taken down and transcribed, but it was not made a part of this Bill of Exception. Counsel for the defendant merely excepted to the verdict "and asked that a formal bill be reserved."

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 9

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

This Bill of Exception was reserved to the court's action in overruling defendant's motion for a new trial. The motion for a new trial alleges that the verdict is contrary to the law and the evidence. The court heard all the evidence on the trial of the case and was convinced of the guilt of the accused beyond a reasonable doubt. All of this evidence, although taken down and transcribed, was not incorporated in the motion for a new trial, nor was it attached to it or made a part of it. Counsel in reserving this Bill of Exception did not request that all the testimony be made a part of his bill of exception.

This court was also satisfied that the statute denouncing the crime is constitutional.

Respectfully submitted at Baton Rouge, Louisiana, this 8th day of November 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Per Curiam to Bill of Exception No. 10

19TH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

[SAME TITLE]

This Bill of Exception was reserved by the defendant to the sentence imposed by the court upon the defendant. A comparison of the sentence with the penalty provisions of the statute (LSA-R.S. 14:103) clearly shows it to be legal in every respect.

Respectfully submitted at Baton Rouge, Louisiana this 8th day of November, 1962.

FRED S. LEBLANC
Judge, 19th Judicial District Court

Filed Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

A True Copy Nov. 8, 1962

(Signed) BETTY BADY
Dy. Clerk

Order Denying Petition for Writ of Certiorari

SUPREME COURT OF LOUISIANA

NEW ORLEANS

No. 46,454

[SAME TITLE]

January 3, 1963

In re: Dion Tyrone Diamond applying for writs of certiori, mandamus and prohibition

The application is denied. We find no error in the rulings complained of.

JBF

JBH

FWH

EHMcC

WBH

JWS

FWS